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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 17, 2002

APPLICATION OF

OLD DOMINION ELECTRIC COOPERATIVE

CASE NO. PUE-2001-00303

For a certificate of public convenience and
necessity for electric generation facilities in
Louisa County

FINAL ORDER

On May 17, 2001, as supplemented on June 19, 2001, Old Dominion Electric Cooperative ("ODEC" or "Cooperative") applied for a certificate of public convenience and necessity authorizing construction and operation of electric generation facilities in Louisa County. ODEC proposes to locate generation facilities on a site in Louisa County, near the county line and the Orange County community of Gordonsville. The Cooperative plans to build combustion turbine facilities that will produce a summer rating of approximately 463 MW when fired by natural gas at 94°F, and 604 MW when fired by oil at 0°F. The facilities will be owned by Louisa Generation, LLC, a not-for-profit cooperative whose only member is ODEC. Commercial operation is proposed to begin by May 1, 2003. The facilities will supply the electric power needs of ODEC's twelve distribution cooperative members – ten in Virginia, one in Delaware, and one in Maryland.

On July 12, 2001, the Commission entered an order docketing this proceeding, requiring ODEC to provide public notice of its application, establishing a procedural schedule, and appointing a Hearing Examiner to hear this case. On August 15, 2001, Columbia Gas of Virginia, Inc. ("Columbia"), filed a Notice of Participation. Columbia holds certificates of

public convenience and necessity issued by the Commission to provide natural gas distribution service in Louisa County where the facilities are proposed to be located. On September 24, 2001, the Piedmont Environmental Council ("PEC") filed comments on the application.

A public hearing was convened on November 14, 2001. John A. Pirko, Esquire, and T. Borden Ellis, Esquire, appeared as counsel for the Cooperative. Rebecca W. Hartz, Esquire, and C. Meade Browder, Jr., Esquire, appeared as counsel for the Commission's Staff. Kodwo Ghartey-Tagoe, Esquire, appeared as counsel for Columbia. Two public witness presented testimony: Daniel Holmes on behalf of PEC, and John H. Snyder. All prefiled testimony was offered into evidence without causing the witnesses to take the witness stand.

On February 6, 2002, the Hearing Examiner issued a ruling identifying certain environmental issues, providing ODEC an opportunity to file supplemental evidence on those issues, and scheduling a hearing to receive the supplemental evidence. On February 28, 2002, the Cooperative filed a Motion for Reconsideration, maintaining that each of the issues identified in the Examiner's ruling was adequately addressed in the existing record. On March 6, Staff filed a response to ODEC's Motion for Reconsideration. On March 8, 2002, the Hearing Examiner issued a ruling canceling the hearing to receive supplemental evidence.

On March 29, 2002, ODEC filed a Motion to Supplement the Record ("Motion"). ODEC sought to supplement the record to include: (1) a copy of its Stationary Source Permit to Construct and Operate issued by the Department of Environmental Quality ("DEQ"); (2) an environmental analysis and a supplemental analysis for a water supply line prepared in August and September 2001; and (3) a cumulative environmental impact analysis prepared by Trinity Consultants, Inc. ("Trinity"). No party objected to the Motion. PEC submitted a letter registering its concern with the introduction of new information and suggesting a hearing should

be convened to provide public witnesses a chance to comment on the new material. The Examiner explained that PEC, as a public witness, cannot cross-examine ODEC on the additional information, and that PEC previously provided oral and written comments on the issues covered by the supplemental testimony. The Examiner found that the Motion should be granted, and that a hearing on the supplemental testimony was not necessary.

On May 9, 2002, Columbia filed a letter advising that it expected to be the owner of the gas lateral that will supply natural gas to the facility, but that it was still negotiating with ODEC over its interest in partial ownership of the gas facilities. On June 4, 2002, the DEQ filed a letter commenting on the supplemental material prepared by Trinity. The DEQ advised that the approach taken by Trinity was a reasonable way to address the cumulative impact issue. It affirmed that Trinity's report contains detailed information and the results show that there would be only minimal increases in air quality levels of SO₂, NO_x, CO, PM₁₀, and ozone. The DEQ also observed that the Trinity report included the latest version of the DEQ's analysis to estimate the impact of a number of proposed facilities on ozone levels around the Commonwealth.

On June 28, 2002, Chief Hearing Examiner Deborah V. Ellenberg entered a Report in which the Examiner summarized the record, and reviewed and analyzed the evidence and issues in this proceeding. The Examiner's Report included the following findings:

- (1) ODEC's March 29, 2002, Motion to Supplement the Record should be granted;
- (2) The facility will have no material adverse effect upon the reliability of electric service provided by regulated public utilities, and will enhance the reliability of service to Virginia cooperatives that are ODEC members;
- (3) The current level of air quality in Louisa County is good, and is in attainment of all National Ambient Air Quality Standards ("NAAQS");

(4) ODEC's cumulative impact analysis in this case is reasonable, tends to overstate potential ground level concentrations of nitrogen oxides, sulfur dioxide, particulate matter, and carbon monoxide from existing and proposed sources, and potential ground level concentrations of ozone;

(5) The cumulative analysis adequately demonstrates that the facility's emissions, when combined with the emissions from 22 other existing or proposed facilities, will have no material adverse effect on NAAQS in Louisa County and surrounding counties;

(6) The facility will have no other adverse environmental impact;

(7) The facility's emissions will have no material effect on economic development in Louisa County and the surrounding counties, because the analysis shows no significant deterioration of air quality and maintenance of levels below the NAAQS;

(8) The evidence supports a finding that the facility will have no adverse effect on competition;

(9) ODEC established a need for the additional capacity;

(10) The facility will have no greater impact on the rates of ODEC member cooperatives than other alternatives that address the capacity need;

(11) The facility will have no material adverse effect on the rates paid by consumers of any regulated natural gas, water or sewer public utility in Virginia;

(12) ODEC should comply with the DEQ's recommendations, except for the recommendations of the Department of Game and Inland Fisheries to which the DEQ will give full consideration in processing an application for a Virginia Water Protection Permit; and

(13) The facility is not otherwise contrary to the public interest.

The Examiner also found that ODEC should file additional information related to traffic concerns and an emergency response plan. The Examiner recommended that the Commission grant ODEC authority and a certificate of public convenience and necessity pursuant to § 56-580 D of the Code of Virginia to construct and operate a generation facility in Louisa County as described in this case. The Examiner also recommended that the certificate be conditioned on the receipt of all environmental and other permits necessary to operate the facility, and that receipt of those permits be verified by filing a list of all such permits and notification when each was received. Finally, the Examiner recommended that the certificate expire two years from the date of a final order if construction has not commenced by that date.

On July 3, 2002, the Cooperative filed comments on the Examiner's Report. ODEC accepts and supports the recommendation that its application be granted. ODEC requests that the Commission grant it authority and a certificate of public convenience and necessity to construct and operate the generation facilities, subject to the conditions recommended by the Examiner. ODEC also contends that the record does not need to be supplemented to address traffic concerns and an emergency response plan. Rather, ODEC commits that it will:

- (1) develop a site plan and traffic analysis, in coordination with the Virginia Department of Transportation ("VDOT") and Louisa County, to address construction traffic, operational traffic (including fuel oil delivery), and all steps required to comply with VDOT standards; and
- (2) develop an emergency response plan acceptable to the Louisa County Emergency Services Coordinator, as required by the Conditional Use Permit issued by Louisa County.

NOW THE COMMISSION, having considered the record, the pleadings, the Examiner's Report, and the applicable law, is of the opinion and finds as follows. As set forth in prior

orders,¹ the Code of Virginia establishes six general criteria, or areas of analysis, that apply to electric generating plant applications. The six criteria are as follows: (1) reliability;² (2) competition;³ (3) rates;⁴ (4) environment;⁵ (5) economic development;⁶ and (6) public interest.⁷ We have evaluated these six areas.

Pursuant to § 56-580 D of the Code of Virginia, we find that the proposed facilities: (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; and (ii) are not otherwise contrary to the public interest. We have evaluated the application pursuant to § 56-46.1 of the Code of Virginia and have given consideration to the effect of the proposed facilities on the environment. We note that, effective July 1, 2002, § 56-46.1 A provides, among other things, that permits regulating environmental impact and mitigation of adverse environmental impact shall be deemed to satisfy the requirements of such section with respect to all matters that are governed by the permit. ODEC filed a copy of its Stationary Source Permit to Construct and Operate issued by the DEQ, which governs air emissions by the proposed facilities. We grant ODEC approval, and a certificate of public convenience and necessity, to construct and operate its proposed facilities.

¹ See, e.g., *Application of Tenaska Virginia Partners, LP, For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Final Order (April 19, 2002).

² Va. Code Ann. §§ 56-580 D(i) and 56-46.1 A.

³ Va. Code Ann. § 56-596 A.

⁴ Va. Code Ann. §§ 56-580 D(ii); 20 VAC 5-302-20 14. See also *Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (Dec. 14, 2001).

⁵ Va. Code Ann. §§ 56-580 D and 56-46.1 A. This includes scenic assets and historic districts.

⁶ Va. Code Ann. §§ 56-46.1 and 56-596 A.

⁷ Va. Code Ann. §§ 56-580 D(ii).

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-580 D of the Code of Virginia, ODEC is hereby granted authority, and a certificate of public convenience and necessity, to construct and operate electric generation facilities in Louisa County, Virginia, as described in this proceeding.

(2) The certificate of public convenience and necessity granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to operate the facilities.

(3) As a condition of the certificate granted in this case, ODEC shall develop a site plan and traffic analysis, in coordination with the Virginia Department of Transportation and Louisa County, to address construction traffic, operational traffic (including fuel oil delivery), and all steps required to comply with Virginia Department of Transportation standards.

(4) As a condition of the certificate granted in this case, ODEC shall develop an emergency response plan acceptable to the Louisa County Emergency Services Coordinator, as required by the Conditional Use Permit issued by Louisa County.

(5) As a condition of the certificate granted in this case, ODEC shall comply with the recommendations of the DEQ, except for the recommendations of the Department of Game and Inland Fisheries to which the DEQ will give full consideration in processing an application for a Virginia Water Protection Permit.

(6) The certificate of public convenience and necessity granted herein shall expire in two years from the date of this order, if construction of the facilities has not commenced.

(7) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

MOORE, Commissioner, Concurs:

I concur with my colleagues in the decision to approve the construction and operation of the ODEC facility. I do so because the Applicant has been issued a permit by the DEQ that governs certain emissions of the proposed facility. The permit is specific in addressing the matters that would cause me to deny the application without further data and analyses.¹

¹Current pollution levels in the ODEC plant area and the impacts of the proposed facility alone and in combination with other proposed facilities were shown to be similar to or greater than those in the *Tenaska* and *Buchanan* cases. In this proceeding, the current maximum background concentration of PM₁₀ on an annual basis was shown to be 64% of the National Ambient Air Quality Standards ("NAAQS"), while the 24-hour PM₁₀ background concentration level was 44% of the NAAQS. The proposed plant alone equals 5% of the total allowed limit and increases the current level by more than 11% under the PM₁₀ 24-hour analysis. Hearing Examiner Report at 16. With respect to ozone, the background concentration level was shown to be 104 ppb under the one-hour standard and, considering the cumulative impact, the total predicted concentration would increase to 108 ppb or 90% of the currently enforced NAAQS. See Figure 1-9 attached to Hearing Examiner Report. Also, here, as in *Tenaska* and *Buchanan*, the revised EPA standards have not been addressed. This is particularly disturbing in light of the relatively high levels of ozone found to be present in the ODEC plant area under the currently enforced standards and the fact that data on the DEQ's Internet site indicate that exceedences under the revised standard for ozone could be as much as 15 times greater than under the current standard. For these and other reasons, I could not have approved the proposed facility without additional data, analyses, and satisfactory explanations. See also Commissioner Moore dissent, *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Final Order, Doc. No. 271123 (April 19, 2002) and Commissioner Moore dissent, *Application of Buchanan Generation, LLC, For permission to construct and operate an electrical generating facility*, Case No. PUE-2001-00657, Final Order, Doc. No. 676869 (June 25, 2002).